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SAAD SITE STEERING COMMITTEE

February 10, 1995



Mr. Andrew Harrison  
Office of Regional Counsel  
U.S. Environmental Protection Agency - Region IV  
345 Courtland St., N.E.  
Atlanta, GA 30365

RE: Saad Trousdale Road Site (the "Site")  
3655 Trousdale Road  
Nashville, Tennessee

Dear Mr. Harrison:

This letter and enclosures are in response to Mr. Stroud's letter dated January 21, 1995 to me, as representative for the Saad Site Steering Committee (the "Committee"), in which he states that he has determined that further removal activities are needed at the Saad Site (the "Site"). For the reasons described below, the Committee declines Mr. Stroud's request to conduct yet another removal at this Site (it would be the sixth removal at this site over the past five years). As I have previously informed you, the Committee also will seek to intervene in opposition to U.S. EPA's request for access in U.S. District Court.

This Site is a state listed site; it is not, and it will not score high enough to become, a federal Superfund site. Whenever EPA finally includes its removal action at the Site, the Tennessee Department of Environment and Conservation ("TDEC") must address the Site pursuant to its regulations, beginning with an RI/FS. Despite this, EPA has spent the last six years requiring that several million dollars be spent on a series of removals, and now insists on another removal that will cost an additional several million dollars. All of this delays, but does not facilitate or eliminate the need for, addressing the Site in TDEC's remedial program.

The Committee consists of almost 100 companies, many of whom are small businesses, and a few individuals. These members are becoming increasingly frustrated with the seemingly endless demands of EPA to conduct removals and the refusal by EPA to permit remedial activities to be guided by the risk and cost-benefit analyses that will result from conducting an RI/FS. These frustrations are heightened by EPA's unwillingness to abide by agreements and understandings that were reached when the

Committee and EPA entered into the 1994 Agreed Order on Consent (the "1994 AOC"), and by EPA's renewed demands to the Committee while not taking promised action against recalcitrants. EPA should withdraw this request and permit the Site to be addressed promptly and completely in TDEC's remedial program. If not, EPA will create another Superfund litigation nightmare.

This latest removal requested by Mr. Stroud is inappropriate for a number of reasons:

1. It is flawed technically, lacking any basis in the available data (much of which, in fact, contradicts the conclusion reached by Mr. Stroud);

2. The Site does not pose an imminent and substantial danger to anyone or anything. What risk that could be postulated as being posed by the Site is only properly managed through an investigation of potential pathways and a reasoned analysis of remedial alternatives in the remedial program of TDEC. The Site does not belong in EPA's removal program, and Mr. Stroud's recommendation is inconsistent with EPA policy and practice for removal actions;

3. The specific removal identified by Mr. Stroud is not even related to the risk he says is posed by Site;

4. Even if the removal recommended by Mr. Stroud had any merit, it is ill-defined, will cost at a minimum several million dollars, and bears no reasonable relationship to any hypothesized benefit that might be derived by moving dirt from the Site to another location; and

5. The request breaches agreements and understandings reached when the 1994 Agreed Order on Consent (AOC) was entered into by the Committee and EPA.

A general explanation of each of these follows. A much greater elaboration and detail of relevant technical matters is contained in letters from the Committee's technical consultants, copies of which are attached hereto.

I emphasize that the situation is not that EPA believes the Site should be addressed and that the Committee believes that no further work is required at the Site. To the contrary, the Committee is committed to whatever is necessary and appropriate to ensure that the Site does not pose an unacceptable threat to human health and the environment. What EPA and the Committee disagree on is what should be done next towards that end. The Committee believes that further removal activities at the Site are inappropriate, are impossible to justify on any reasoned

cost-benefit or other basis, and are counterproductive, and that instead what is appropriate is that the Site be addressed under a conventional remedial program. The Committee and TDEC are prepared to address the Site under TDEC's Superfund remedial program (the Site is a state-listed site but is not on the federal NPL) and will do so immediately upon EPA's determination that EPA has completed its removal activities.

Inadequacy of Reasons Cited by Mr. Stroud

In his January 21, 1995 letter Mr. Stroud cited four reasons that an additional removal is required. These reasons, and the reasons they are inadequate or irrelevant, are as follows:

1. Mr. Stroud states that material that is hazardous by characteristic (failed TCLP for TCE) is in contact with groundwater. In fact, the data to which he refers are from samples taken from soil that has since been removed from the Site and not from samples of soils that remain on the Site. The soils that have been removed are those with the highest detected contaminant concentrations. There is no reason to assume that any remaining soils are characteristically hazardous. Also, the TCLP test is for disposal characterization and is not used to determine nature and extent of contamination nor associated risk evaluations.
2. Mr. Stroud states that material at the site contains toluene, xylene, vinyl chloride as well as other hazardous substances, but does not state on which data he is relying. If he is relying on recent data, then they are from soils that have been removed from the Site and are not representative of or relevant to current Site conditions. If he is relying on old data from soils that remain on the Site, then the levels are below standard risk-based screening levels for industrial/commercial sites.
3. Mr. Stroud states that the groundwater at the Site is "potential drinking water" and requires protection. In later discussions with Mr. Stroud, he stated that this is based solely on the rate of water that can be pumped and is without regard to any other factors. In fact, no potential groundwater receptors whatsoever have been identified. In addition, the shallow groundwater at the Site is unlikely ever to yield sufficient groundwater quantity for domestic use. There is simply no indication that there is any possibility that this water at the Site or near the Site may be used as drinking water, or otherwise impact a receptor.

4. Mr. Stroud concludes that preliminary dye trace results substantiate previous studies indicating that the contaminated water from the Site has migrated and poses an imminent and substantial endangerment to human health and the environment. In fact, the dye trace work performed to date is flawed and inconclusive, and it is being redone by EPA and Dr. Crawford. Even assuming that Mr. Stroud's conclusions are correct, then groundwater at the Site may be migrating towards the Radnor Yards. Groundwater at the Radnor Yards is not potential drinking water under any legitimate scenario, primarily because of the heavy industrial use of these yards.

In discussions, Mr. Stroud has mentioned additional reasons why we believe that yet another removal is necessary. These reasons, and the reasons that they are inadequate or irrelevant, are as follows:

5. Mr. Stroud has claimed that it is the sludges at the Site that are contaminated and pose significant risk justifying a removal action. In fact, the data do not bear this out. Specifically, the only sludges that have been characterized for disposal have not failed TCLP (they were at or near non-detect for TCE and the other hazardous substances cited by Mr. Stroud), and the data cited by Mr. Stroud as reflecting contamination that is posing an unacceptable risk were not from samples from sludges, but were from soils that have since been removed from the Site.
6. Mr. Stroud has cited certain other soil and groundwater data to justify a conclusion that the Site poses substantial risk. In fact, these data are old and do not reflect current Site conditions. In many cases those data were collected over seven years ago (before the five removals to date). Almost all the soils data he cites are from soils that have been excavated and removed from the Site and show contaminant levels higher than soils that now remain at the Site.<sup>1</sup> The

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<sup>1</sup> The Committee has consistently maintained that the levels of contamination at the Site before the 1994 removals did not, on the basis of risk or otherwise, justify those removals. As was several times related to EPA (both to Mr. Stroud and to Wilda Cobb), the Committee agreed to the 1994 AOC only to terminate EPA's activities at the Site, at a cost that the Committee was willing to pay, so that the Committee could then proceed with an RI/FS with TDEC. The Committee did not then, and does not now,

current groundwater data he cites are from excavation trenches and pits rather than from groundwater wells. This pit water has been contaminated by the excavation activities and is not representative of groundwater at the Site. There is no data to indicate that groundwater in undisturbed areas is contaminated. These data cannot be used to determine whether additional removal work should be done at the Site.

7. Mr. Stroud continues to cite a 1979 photograph from TDEC's files, showing an oily pond and oily soils at the rear of the Saad property and at the rear of what is now the Franklin Brick property, as conclusive evidence that the Site is contaminated and needs to be excavated. It is not clear why this is relevant, given the data that has been collected. In fact, the removal activities to date have included excavation of the entire area covered by the oily pond and oily soils shown in that picture. These soils contained higher levels of contaminants than the soil that now remain on the Site.<sup>2</sup>
8. Mr. Stroud has often stated generally that the Site is heavily contaminated and simply needs to be excavated. In fact, available data indicate that the vast majority of TCE contamination and the vast majority of other hazardous substance contamination have been removed from the Site during previous removal activities. Addressing the areas of greatest concern is consistent with the purpose of a removal action.<sup>3</sup> Excavating the remainder of this Site is not.

I have also addressed these matters in a separate letter to Mr. Stroud, a copy of which is enclosed.

#### Breach by EPA of Prior Agreements

The 1994 AOC with the Committee was discrete and limited. It involved removal of 800 cubic yards of soil, which were to be taken from the area that Mr. Stroud had identified as of greatest concern to him based on past sampling data. The Committee refused to execute an order that gave Mr. Stroud the ability arbitrarily to expand the scope of work. Also, the Committee

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believe that the 1994 removal was necessary or appropriate.

<sup>2</sup> See footnote 1 above.

<sup>3</sup> See footnote 1 above.

entered into the AOC with an understanding and agreement that additional work at the Site would be conducted only if the results of the dye trace or that removal work indicated that the Site was significantly more contaminated, and posed a greater risk, than was apparent at that time. In that event, it was understood that EPA would offer the Committee the opportunity to do additional work and, if the Committee declined to do so, EPA would either pursue recalcitrants to do additional removal work or conduct the additional removal work itself.

The Committee complied with the requirements of the 1994 AOC. Following that, Mr. Stroud immediately insisted that additional removal work be done. Alcoa, which is not a member of the Committee, was pursued for this and eventually signed a separate AOC in late 1994. No other recalcitrants were pursued. Pursuant to that AOC, Alcoa removed an additional approximately 1,000 cubic yards of soil. This was from the area that was judged by Mr. Stroud to be, of the soils that remained, of greatest concern to him.

For EPA to require or conduct additional removal action at this Site when the Site does not pose any greater risk than was anticipated when the 1994 AOC was executed is in bad faith and a breach of the agreements reached in connection with the execution of that AOC. The Committee would not have conducted the work under the 1994 AOC, and would not have waived the rights it is required to waive under an agreed order, without the understanding and agreement that the work under the 1994 AOC would terminate EPA's activities at the site (barring discovery of significantly greater contamination and risk than was anticipated).

Whatever latitude EPA has been given by Congress in the current Superfund statute does not extend to acting in bad faith and breaching agreements. Such actions can only further exacerbate the controversy and contentiousness that plagues the Superfund program in general.

Finally, the Committee and I are extremely concerned that you have indicated that EPA is considering issuing a unilateral order to Committee members to conduct this work if an agreed order is not entered into. As I have told you, and as previously noted herein, it was agreed during negotiation of the 1994 AOC that if significant additional contamination and risk was discovered and if in response to that Mr. Stroud wanted additional removal work to be conducted, then (i) the Committee would be given the option of doing this work, and (ii) in the event that the Committee declined to perform the work, then EPA would either pursue recalcitrants or fund and do the work itself pending cost recovery. This clearly precluded a unilateral order

against members of the Committee. That these were the only options is reflected both in my letter to Wilda Cobb dated September 12, 1994, upon which Committee members relied in executing the 1994 AOC, and in Mr. Stroud's letter to which this letter responds.

I ask that you communicate these comments and concerns to all appropriate individuals at EPA. The Committee members are very disturbed by this. The Committee will seek a full airing of this matter if EPA pursues a unilateral order.

#### Additional Reasons the Proposed Removal Action is Unwarranted

1. The Requested Work is Beyond the Scope of the Removal Program. Over the last six years there have been a total of five separate EPA directed removals at the site at a cost in excess of \$3,000,000 (actually approaching \$4,000,000 if EPA's costs are included). These removals have removed over 6,000,000 pounds of soil, sludges and debris from this 0.4 acre site. Each of these removal actions addressed what were, at that time, the areas judged by EPA to be of greatest concern.<sup>4</sup> This has, by definition, far exceeded the intent of the removal action program and has become a remedial program implemented by successive pseudo-emergencies. Mr. Stroud has failed to take into account Site conditions sufficiently well to determine how to use the removal program efficiently. It is possible that he is merely using the removal program to conduct as much excavation as possible.

After five years of removal work at this Site, the Committee is convinced that Mr. Stroud is committed to massive excavation without justification and is ignoring the data and evidence that demonstrate the inappropriateness of this approach. This concern is compounded by reports of Mr. Stroud's activities at other sites, such as the Peak Oil site (Tampa, Florida), and the Escambia Wood Treating site (Pensacola, Florida). The Committee is also informed by its project coordinator, de maximis, inc., that Mr. Stroud's cost estimate of \$1,500,000 for the work he has requested is unrealistic, and that a more realistic estimate is \$1,500,000 to \$5,000,000.

2. Absence of Immediate or Short-Term Risk Posed by the Site. Prior to the work conducted under the 1994 AOC, Mr. Stroud insisted that further removal work was necessary because of the

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<sup>4</sup> See footnote 1 above

threat that the Site allegedly posed to the Croft Spring.<sup>5</sup> There was not then, and is not now, any evidence that the Site is affecting water quality at the Croft Spring. Certainly the dye trace results do not indicate this. The few water samples from the spring that have been analyzed, including those prior to performance of the dye trace and the 1994 work, show none of the contaminants that are now of concern to Mr. Stroud. Nothing indicates that there would be any improvement whatsoever in the Croft Spring as a result of EPA's proposed additional removal activities at the Site. No other springs have been identified that are even possibly impacted.

Mr. Stroud also insists that contamination of shallow groundwater at the Site is sufficient basis for a sixth removal at the Site even though (i) he has not been able to identify a single receptor, individual, plant or animal that may be affected by any contamination in this groundwater, and (ii) there is no data to indicate that this groundwater in fact is contaminated at a level of regulatory concern. Needless to say, since no receptor has been identified, there is no showing that there will be any reduction in risk at a receptor from the proposed removal.

Mr. Stroud has stated that he does not have to show that there is any possibility that this water at the Site may be used as drinking water, or otherwise impact a receptor, in any reasonable time frame. Rather, he states that all that is required is a showing that (i) hazardous substance contamination is in contact with groundwater (there is not data that shows this), (ii) the groundwater is capable of being pumped at a volume that could be used at some point in the future for residential use, without regard to the likelihood of that use, (this is both speculative and unrealistic), and (iii) that groundwater is contaminated at levels above drinking water MCLs (there is no data that shows this). It is unreasonable to believe or assume that near-surface waters beneath the Saad Site or the adjacent Radnor Yards are or will be used for drinking water. In any event, MCLs are point of use standards, the applicability of which is properly determined as part of, or based on, an RI/FS.

What Mr. Stroud has described is a site that is classically and typically addressed in a remedial program. If his criteria defined a site that should be addressed in a removal program, then most sites would have all soil contamination excavated as

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<sup>5</sup> The Committee had expressed concerns to Mr. Stroud that the work under the 1994 AOC and work being conducted by CSXT at the Radnor Yards could interfere with the dye trace study. Mr. Stroud nevertheless insisted that the dye trace study proceed.



part of the removal program and would address only groundwater in the remedial program. There would be no such thing as a remedial action for soils; everything would be an immediate removal action. This is clearly not the case, is in no way consistent with the distinctions made between removal and remedial programs, and is flatly violative of the NCP.

3. Proposed Work is Arbitrary and Capricious. Mr. Stroud has said repeatedly that the entire "source" must be removed and that cost considerations are not relevant. He has never identified this "source". He has at times described the "source" that needs to be removed as the sludges remaining at certain parts of the site; he has at other times described this "source" in terms of contamination levels based on ARAR's that are to be determined by him in the field and confirmed by sampling; and he has at other times described this "source" as what he sees in the field that causes him concern. At no time has he in any way related any of these definitions to the area that he now proposes for removal. That area is basically all of the Saad Site behind the small building at the front of Site, to a depth of at least 12 feet and, depending on field conditions, possibly to bedrock at 22 feet. (Again, the Committee's experience with Mr. Stroud at this Site, and the reports of Mr. Stroud's activities at the other sites referred to above, create concern that any of these limits are meaningful.)

Mr. Stroud has in no way defined this scope of work based on known or anticipated contamination levels. He has apparently based it instead primarily on property boundaries. This creates the possibility that all this work will be done to create a small oasis of cleanliness in an industrial area with significant area-wide contamination. This demand is not founded in science or logic. It is arbitrary and capricious.

4. Inconsistency with State Remedial Action. Any additional removal actions at the site should be consistent with remedial activities planned for the site and for adjacent and near-by sites in the vicinity. The removal requested by Mr. Stroud does not meet this requirement.

As is required by Tennessee regulations, decisions on clean-up activities at the site by TDEC will be based on an assessment of the risks posed by the contamination at the site and the benefits and cost-effectiveness of the proposed cleanup activities. TDEC will assess the Saad site in the context of actual risk, realistic future property use scenarios and reasonable cleanup activities.

Senior management at TDEC and Brenda Apple of TDEC have both recently confirmed to me that (i) TDEC will address the site

under the Tennessee regulations, beginning with an RI/FS, as soon as EPA determines that EPA is done, (ii) TDEC has not conducted sufficient analysis of the site at this time to recommend whether or not additional removal action is warranted, and (iii) TDEC has not requested or recommended that EPA conduct any additional removal action.

It is impossible to conclude that the removal action requested by Mr. Stroud will be consistent with the remedial activities to be conducted. The specific remedial activities required by TDEC have not been determined. They will be based on the RI/FS, which is yet to be performed.

### Conclusions

For all of these reasons, additional removal work is not supportable under the facts presented by this site. Remedial investigation, including risk assessment, under TDEC Superfund regulations is justified to identify reasonable remedial alternatives, to ascertain the effectiveness and cost of those alternatives, and to choose and implement the appropriate alternative. Risk assessment is a tool required by the NCP to assure that a response action is cost effective as opposed to blindly excavating the Site irrespective of the risk posed by the Site or the risk reduction effected thereby. The Committee's desire to conduct an RI/FS with TDEC at this time is not an attempt to avoid action, but rather a means to prioritize activities and establish clean-up targets on a basis of human health and environmental protection rather than blindly excavating all soils that might possibly contain some contaminants.

The Committee will work with TDEC to conduct the RI/FS as soon as EPA withdraws its request for a sixth removal at this site. The Committee is, and has been, committed to addressing the site in full compliance with TDEC's regulations.

You have told me that EPA has decided that additional removal work is necessary. Any such decision, however, is necessarily based only on selected information that has been provided by Mr. Stroud. This response provides additional information which is at odds with his interpretations. Also, I emphasize that this is the first technical response of the Committee to Mr. Stroud's request. The Committee will supplement and discuss this response at the meeting it has requested and expects will be held among EPA, TDEC, the Committee and Alcoa. Further, the Committee requests that this meeting be in Atlanta and include those others at EPA who will have to approve Mr. Stroud's recommendation.

The Committee asks that EPA withdraw its request for a sixth removal so that the Committee and TDEC may get on with the work of conducting an RI/FS under TDEC's regulations, making technically based and rational decisions about any necessary remedial activities, and implementing these decisions at the site. IF EPA persists in its request, then EPA will be choosing a course that will necessarily result in much unnecessary litigation, in much ill-will, and in significant delay of the final remediation of this Site.

I look forward to hearing from you.

Sincerely,

SAAD SITE STEERING COMMITTEE

By: Andrew Goddard  
Chairman of the Executive  
Committee

cc w/ enclosures:

Mr. Fred Stroud  
Mr. Shane Hitchcock  
Mr. Richard Green  
Mr. Joseph Franzmathis  
Mr. Patrick M. Tobin  
Mr. John H. Hankinson, Jr.  
Ms. Wilda W. Cobb  
Mr. T. Anthony Quinn  
Mr. Robert C. Watson

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